Shane Steel Processing, Inc. and J&J Land LLC, A Single Employer[1] *and* Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–50288

February 29, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that Respondent Shane Steel Processing, Inc. (Respondent Shane) has withdrawn its answer and amended answer to the complaint and compliance specification. On May 31, 2006, the Board issued a Decision and Order in Cases 7–CA–47710 and 7–CA–48016,[2] that, among other things, ordered Respondent Shane to make the unit employees whole for any loss of earnings and other benefits resulting from Respondent Shane's unlawful conduct in violation of Section 8(a)(5) and (1) of the Act. On November 21, 2006, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.[3]

A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, on July 31, 2007, the Regional Director issued a complaint, compliance specification, and order consolidating complaint and compliance specification. On August 20 and October 16, 2007, respectively, Respondent Shane filed an answer and an amended answer to the consolidated complaint and compliance specification. On December 20, 2007, Respondent Shane, by counsel, withdrew its answer and amended answer to the complaint and compliance specification.[4]

On January 4, 2008, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. The General Counsel noted that his motion was directed only against Respondent Shane, because the Regional Director approved a conditional settlement agreement between Local 771, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union) and J&J Land LLC (Respondent J&J) on October 15, 2007. Thereafter, on January 9, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent Shane filed no response. The allegations in the motion and in the consolidated complaint and compliance specification are therefore undisputed.[5]

Ruling on Motion for Default Judgment[6]

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was filed by August 21, 2007, the Board could find that the allegations in the consolidated complaint and compliance specification are true.

Here, according to the uncontroverted allegations of the motion for default judgment, although Respondent Shane initially filed an answer and amended answer to

[1] In light of the settlement agreement between J&J Land LLC and the Union (discussed below), we make no finding as to whether the Respondents are a single employer, as alleged in the consolidated complaint and compliance specification. See fn. 5 below.

[2] 347 NLRB No. 18 (2006).

[3] Case No. 06-2111.

[4] Specifically, the withdrawal letter states:

> My client has authorized me to inform you that Respondent withdraws its Answer to the Complaint and Compliance Specification in connection with the above referenced matter [Case 7–CA–50288].

The General Counsel's Motion for Default Judgment refers to Respondent Shane as having withdrawn its "Amended Answer to the Complaint and Compliance Specification." Based on the context of the letter, and in the absence of a response to the Notice to Show Cause or to the General Counsel's motion, we consider the withdrawal letter from counsel for Respondent Shane as having withdrawn both the answer and amended answer.

[5] Respondent J&J filed a limited objection to the order transferring proceeding to the Board and Notice to Show Cause, requesting that the Board limit any default judgment or other Order to Respondent Shane only and make this clarification in both the title and the body of the Order. We shall not amend the case caption because, inter alia, the settlement agreement referred to in fn. 1 above indicates (1) that Respondent J&J's status in this proceeding as a single employer with Respondent Shane will depend on the resolution of that issue in Cases 7–CA–47710 and 7–CA–48016, and that (2) if Respondent J&J is found to be a single employer in that proceeding, it "will be liable for any unfair labor practices admitted to by" Respondent Shane. But, in light of the settlement agreement, and consistent with the General Counsel's motion, the provisions of this Order are directed only against Respondent Shane.

[6] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

the consolidated complaint and compliance specification, Respondent Shane, by counsel, withdrew its answer and amended answer on December 20, 2007. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the compliance specification must be considered to be true.[7]

Accordingly, based on the withdrawal of Respondent Shane's answer and amended answer to the consolidated complaint and compliance specification, and in the absence of good cause being shown otherwise, we deem the allegations in the consolidated complaint and compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment against Respondent Shane. On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Shane has been a Michigan corporation with an office and place of business located at 17495 Malyn Boulevard, Fraser, Michigan, and has been engaged in the manufacture and processing of commercial steel bars.

During the calendar year 2006, Respondent Shane, in conducting its operations described above, received gross revenue in excess of $500,000 and purchased and received at its Fraser facility goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

We find that Respondent Shane is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the International Union), are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Hartley held the position of president of Respondent Shane and has been a supervisor of Respondent Shane within the meaning of Section 2(11) of the Act and an agent of Respondent Shane within the meaning of Section 2(13) of the Act. At all material times, Jane McNamara has been a supervisor of Respondent Shane within the meaning of Section 2(11) of the Act and an agent of Respondent Shane within the meaning of Section 2(13) of the Act.[8]

The following employees of Respondent Shane constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by Respondent Shane at its facility at 17495 Malyn Boulevard, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

Since about March 9, 1976, and at all material times, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit and has been recognized as such by Respondent Shane. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 17, 2000 to March 17, 2002.

At all material times, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit.

The International Union has assigned its representative responsibilities with respect to the unit to the Union.

About December 1, 2006, Respondent Shane unilaterally eliminated dental and vision coverage for unit employees.

About December 29, 2006, Respondent Shane unilaterally changed the unit employees' payday.

Since about January 1, 2007, Respondent Shane unilaterally failed to pay vacation pay to unit employees.

Since about February 25, 2007, Respondent Shane unilaterally failed to pay unit employees for hours worked.

About March 22, 2007, Respondent Shane failed to provide the Union proper notice and a meaningful opportunity to bargain regarding the layoff of unit employees and subsequent closing.

About April 2007, Respondent Shane unilaterally eliminated health insurance coverage for unit employees retroactive to December 19, 2006.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Respondent Shane engaged in the conduct set forth above without affording the Union notice and a meaningful opportunity to bargain about these changes and their effects on the unit.

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[7] See *Maislin Transport*, 274 NLRB 529 (1985).

[8] The consolidated complaint and compliance specification also alleges that John Hartley and Jane McNamara are 50 percent members of Respondent J&J, and have been supervisors and agents of Respondent J&J within the meaning of Section 2(11) and (13) of the Act. As noted above, Respondent J&J entered into a settlement agreement with the Union. Accordingly, we do not make any findings with respect to Respondent J&J.

CONCLUSION OF LAW

By the acts and conduct described above, Respondent Shane has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. Respondent Shane's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent Shane has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent Shane violated Section 8(a)(5) and (1) of the Act by unilaterally (1) eliminating dental and vision coverage for unit employees; (2) changing the unit employees' payday; (3) failing to pay vacation pay to unit employees; (4) failing to pay unit employees for hours worked; (5) eliminating health insurance coverage for unit employees retroactive to December 19, 2006; and (6) failing to provide the Union proper notice and a meaningful opportunity to bargain regarding the layoff of unit employees and subsequent closing, we shall order Respondent Shane to make unit employees whole by paying them the amounts set forth in the compliance specification, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

To remedy Respondent Shane's unlawful failure to bargain with the Union about the effects of its decision to close its facility, we shall order Respondent Shane to bargain with the Union, on request, about the effects of that decision. As a result of Respondent Shane's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for Respondent Shane. We shall do so by ordering Respondent Shane to pay backpay to the terminated unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Pursuant to *Transmarine*, Respondent Shane typically would be required to pay its unit employees backpay at the rate of their normal wages when last in Respondent Shane's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent Shane bargains to agreement with the Union on those subjects pertaining to the effects of closing its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of Respondent Shane's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

Transmarine provides that the sum paid to these unit employees may not exceed the amount they would have earned as wages from the date on which Respondent Shane ceased doing business at the facility to the time they secured equivalent employment elsewhere, or the date on which Respondent Shane shall have offered to bargain in good faith, whichever occurs sooner. However, *Transmarine* further provides that in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent Shane's employ. Backpay is typically based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and is computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

Here, in the circumstances of Respondent Shane's cessation of operations, the General Counsel in the compliance specification seeks only the minimum 2 weeks of backpay due the terminated employees under *Transmarine*. Attachments 1 through 4 to the consolidated complaint and compliance specification set forth the amount due each employee. We shall grant the General Counsel's request and order Respondent Shane to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

Further, in view of the fact that Respondent Shane's facility is closed, we shall order Respondent Shane to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that Respondent Shane Steel Processing, Inc., Fraser, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 771, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of the employees in the unit by unilaterally eliminating dental and vision coverage for unit employees; changing the unit employees' payday; failing to pay vacation pay to unit employees; failing to pay unit employees for hours worked; eliminating health insurance coverage for unit employees retroactive to December 19, 2006; and failing to provide proper notice and a meaningful opportunity to bargain regarding the layoff of unit employees and subsequent closing. The appropriate unit is:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by Respondent Shane at its facility at 17495 Malyn Boulevard, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of Respondent Shane's decision to close its Fraser, Michigan facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of Respondent Shane's change of unit employees' payday and its failure to pay dental and vision coverage, vacation pay, wages for hours worked, and health insurance coverage, and its failure to bargain with the Union concerning the effects on unit employees of its decision to close its Fraser, Michigan facility, by paying them the amounts following their names, plus interest accrued to the date of payment, as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Robert Hayes	$ 5,746.63
William Koch	5,593.62
Kenneth LaFleur	5,147.38
Nick Maltese	4,838.21
William Martin	4,804.64
Patrick Randazzo	4,095.07
Richard Regelin	2,297,46
Robert Rochner	5,012.47
Julia Vargas	6,047.80
Mirko Vitanoski	5,144.83
Frederick Wendt	5,649.95
Howard Wucetich	5,433.12
TOTAL	$ 59,811.18

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by Respondent Shane's authorized representative, copies of the attached notice marked "Appendix"[9] to the Union and to all unit employees employed by Respondent Shane on or after December 1, 2006.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Shane has taken to comply.

Dated, Washington, D.C. February 29, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 771, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of unit employees by eliminating dental and vision coverage for unit employees; changing unit employees' payday; failing to pay vacation pay to unit employees; failing to pay unit employees for hours worked; eliminating health insurance coverage for unit employees retroactive to December 19, 2006; and failing to provide proper notice and a meaningful opportunity to bargain regarding the layoff of unit employees and subsequent closing of our Fraser, Michigan facility. The appropriate unit is:

All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by us at our facility at 17495 Malyn Boulevard, Fraser, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on the unit employees of our decision to close our Fraser, Michigan facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make whole the unit employees for losses suffered as a result of our change of unit employees' payday and our failure to pay dental and vision coverage, vacation pay, wages for hours worked, and health insurance coverage, and to bargain with the Union concerning the effects on the unit employees of our decision to close our Fraser, Michigan facility, by paying them the amounts following their names, with interest.

Robert Hayes	$ 5,746.63
William Koch	5,593.62
Kenneth LaFleur	5,147.38
Nick Maltese	4,838.21
William Martin	4,804.64
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SHANE STEEL PROCESSING, INC. AND J&J LAND LLC